Pam Pasternak

The Chairman, Michael Hutson, called the meeting of the Board of Zoning Appeals to order at 7:30 P.M., on Tuesday, February 18, 2003.

PRESENT: Kenneth Courtney ALSO PRESENT: Mark Stimac Christopher Feies Allan Motzny

Christopher Fejes Marcia Gies Michael Hutson Mark Maxwell Mark Vleck

ABSENT: Matthew Kovacs

Motion by Hutson Supported by Fejes

MOVED, to excuse Mr. Kovacs from this meeting due to illness.

Yeas: All – 6

MOTION TO EXCUSE MR. KOVACS CARRIED

ITEM #1 - APPROVAL OF MINUTES - MEETING OF JANUARY 21, 2003

Motion by Courtney Supported by Fejes

MOVED, to approve minutes of meeting of January 21, 2003 as written.

Yeas: 5 – Fejes, Gies, Hutson, Maxwell, Courtney

Abstain: 1 – Vleck

MOTION TO APPROVE MINUTES AS WRITTEN CARRIED

ITEM #2 - APPROVAL OF ITEMS #3 AND #4

RESOLVED, that items #3 and #4 are hereby approved in accordance with the suggested resolutions printed in the Agenda Explanation.

Motion by Courtney Supported by Maxwell

Yeas: 6 – Gies, Hutson, Maxwell, Vleck, Courtney, Fejes

ITEM #3 – RENEWAL REQUESTED. JOSEPH SCHWARTZ, AMERICAN HOUSE HOLDINGS, 2300 GRAND HAVEN, for relief of the 4'-6" high masonry wall required along the north and east side of off-street parking where it is adjacent to residentially zoned land.

Mr. Stimac explained that the petitioner is requesting renewal of a variance granted by this Board in 1997 for relief of the 4'-6" high masonry wall required along the north and east sides of the off-street parking area where it is adjacent to residentially zoned land. This variance was originally approved, based on the fact that there is more than adequate room between the parking area and drives and the adjacent residential property. This item last appeared before this Board at the meeting of February 2000 and was granted a three (3) year renewal at that time. Conditions remain the same and we have no complaints or objections on file.

MOVED, to grant Joseph Schwartz, 2300 Grand Haven, a three (3) year renewal of relief of the 4'-6" high masonry wall required along the north and east sides of the off-street parking area where it is adjacent to residentially zoned land.

- Conditions remain the same.
- There are no complaints or objections on file.

ITEM #4 – RENEWAL REQUESTED. ST. GEORGE ORTHODOX CHURCH, 2160 E. MAPLE, for relief to maintain a 5' high landscaped berm along the south and east property lines in place of the 4'-6" high masonry screening wall; and relief of the 4'-6" high masonry wall required along the west side of off-street parking where it is adjacent to residentially zoned land.

Mr. Stimac explained that the petitioner is requesting renewal of a variance granted by this Board since February 1993, which allowed for the construction of a 5' high landscaped berm, in lieu of the 4'-6" high masonry wall, along the south and east property lines, and relief of the 4'-6" high masonry wall required along the west property line. The relief was originally granted based on the fact that the property to the west is a non-residential use under the terms of a consent judgment and the neighbors to the south and east preferred a berm in lieu of a wall. This item last appeared before this Board at the meeting of March 2000 and was granted a three (3) year renewal at that time. Conditions remain the same and we have no complaints or objections on file.

MOVED, to grant St. George Orthodox Church, 2160 E. Maple, a three (3) year renewal of relief to maintain a 5' high landscaped berm, in lieu of the 4'-6" high masonry wall, along the south and east property lines, and relief of the 4'-6" high masonry wall required along the west property line where the parking lot is adjacent to residentially zoned land.

- Property to the west is a non-residential use under the terms of a consent iudament.
- Neighbors on the east and the south prefer a berm in lieu of a wall.

ITEM #5 – VARIANCE REQUESTED. MR. JACK FIELDS, REPRESENTING NINO SALVAGGIO MARKETPLACE, 6835 ROCHESTER, relief of the front yard setback to add a 30' deep by 170.5' wide outdoor storage and display area on the east side of the existing facility.

Mr. Stimac explained that the petitioner is requesting relief of the Zoning Ordinance to add a 30' deep by 170.5' wide outdoor storage and display area on the east side of the existing facility. This property is located in the B-2 (Community Business) zoning district. Section 21.30.04 of the Troy Zoning Ordinance requires that these types of display areas be setback from the property line equal to that required for buildings in the district. Section 30.20.05 of the Troy Zoning Ordinance requires a 75' front yard setback in the B-2 Zoning District. This facility was granted a variance in 1995 to have a 45' front yard setback to the property line along Rochester Road where a 75' setback was required. The site plan submitted indicates that this setback would be reduced to 15' with the new outdoor display area. This item last appeared before this Board at the meeting of January 21, 2003 and was postponed at the request of the petitioner.

Mr. Kirk Taylor, one of the owners of Salvaggio Marketplace was present and stated they are not seeking a variance to add a permanent structure. Mr. Taylor explained that they would add a tent and move the existing fence for a period of time, which would be for the months of May and June only. At the end of this time period the fence would be put back in the original position. Mr. Taylor also went on to say that this area would be used for spring bedding plants and flowers. Mr. Taylor further stated that when they opened this store six and one-half years ago, they were mainly a fruit market. Mr. Taylor said that they now meet the needs of the residents by providing fresh flowers and if they had known that the demand would be as great for flowers in the beginning, they would have designed the building to accommodate these flowers. Mr. Taylor brought in a large number of signed letters from customers indicating approval of this variance request. Mr. Taylor also brought in approval letters from his surrounding neighbors, which also indicate approval of this request.

Mr. Courtney asked where these plants have been stored in the past. Mr. Taylor stated that they had been placed around the perimeter of the store under the awning; however, due to the size limitations of that area they have to re-stock the area on a daily basis. Mr. Taylor also said that requests for these flowers have increased and this variance would allow them to bring in a larger supply of flowers.

Mr. Hutson asked the petitioner if they could use the parking lot for these flowers. Mr. Taylor indicated that he felt it would be safer to place the flowers in this location, rather than the parking lot.

Mr. Courtney expressed concern about the distraction these flowers would be for motorists along Rochester Road. Mr. Taylor said that the flowers are visible now from on coming traffic on Rochester Road and did not think that this display would create any more of a distraction. Mr. Taylor also said that this building looks quite impressive with all the flowers in the spring. Mr. Taylor further stated that he is not looking for more

ITEM #5 - con't.

visibility along Rochester Road and only wishes to be able to serve the Community more efficiently. Mr. Courtney asked if a tent would be required, if the flowers were placed in the parking lot. Mr. Taylor said that the reason they require a tent is to protect some of the flowers, which are sun sensitive. Mr. Taylor said that in the past they have placed them under the overhang of the building, and this tent would allow them to place more flowers in the area.

Mr. Fejes asked what type of product would be put in the area where the flowers had been located, and Mr. Taylor said that they would still be using this area for flowers. Mr. Taylor indicated that due to demand, he needed more space to provide a greater selection of flowers. Mr. Taylor also said that in the past they had been getting a delivery of flowers on a daily basis in order to keep up with customer demand. Mr. Fejes also said that he had been one of the strong supporters of this enterprise when it first came to Troy, however, is concerned about the number of variances this petitioner will request. Mr. Taylor said that since they have opened they have not come before this Board to request any additional variances, but that he could not predict the future, and it was possible that they may come before the Board again in another five or ten years to ask for another variance.

Mr. Hutson said that he is concerned that the petitioner has already reduced the setback from 75' to 45' and now wants to reduce it again. Mr. Hutson also said that perhaps Mr. Taylor has outgrown this area.

Mr. Courtney asked about the special use of a tent. Mr. Stimac stated that there are provisions in the City Code that allow for temporary tents as part of a special event, however, they have a seven (7) day time limit. Mr. Stimac also said that they are used basically for festivals, carnivals, etc. Mr. Stimac also indicated that the ordinance specifically states that they couldn't be used as an additional sales area. Mr. Stimac further stated that the Ordinance requires all sales areas are to be in an enclosed area. Mr. Fejes stated that they wished the tent as a covering for the plants and not as a sales area.

Mr. Maxwell asked what access would be provided to this temporary display. Mr. Taylor stated that there would not be any access from Rochester Road, but that customers would have to use the store's entrance.

The Chairman opened the Public Hearing. No one wished to be heard and the Public Hearing was closed.

There were no written approvals or objections received by the Building Department. Mr. Taylor brought in approvals from the neighboring properties.

Mr. Vleck asked what the setbacks were for the office building to the north and the kennel to the south. Mr. Stimac stated that the office building to the north was

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constructed at a time when the right of way for Rochester Road was 75' and that the office building is in the O-1 Zoning Classification, which requires a 30' front setback. Mr. Stimac said that therefore the office building is 105' from the centerline of Rochester Road. Mr. Stimac also said that the kennel to the south was originally built as a house is approximately 85' to 90' from the centerline of Rochester Road.

Mr. Fejes asked if a variance could be granted for only one year and Mr. Motzny stated that the petitioner was requesting a permanent variance. Mr. Motzny also stated that a time period could be imposed on the variance, which would indicate that this temporary structure was only allowed for the months of May and June. Mr. Stimac also said that because this was a request for a setback variance, it would be considered a permanent variance.

Mr. Vleck asked if the variance were to be granted, if the petitioner would then be allowed to construct a permanent structure. Mr. Motzny stated that a condition could be placed on the variance regarding the type of structures permitted that would run with the land, which would be a valid condition. Mr. Stimac pointed out that the applicant stated in his application, that he only wished to enclose this area during the months of May and June with a temporary fence, and that the tent would only cover 1800 square feet. Mr. Stimac stated that the petitioner had supplied these conditions as part of his application.

Mr. Maxwell asked what the area would look like after June. Mr. Taylor stated that the tent would be removed and the area would be returned to its original condition. Mr. Taylor also said that the grass would remain and the original fence would be put back in place.

Mr. Vleck asked if the petitioner would have to come back to the Board on a yearly basis for permission for the outdoor display. Mr. Stimac stated that the area would be inspected by the Building Department to insure that the petitioner is in compliance with the variance, but that he would not have to come back to the Board on a yearly basis.

Motion by Fejes Supported by Maxwell

MOVED, to grant Nino Salvaggio Marketplace, relief of the front yard setback to add a 30' deep by 170.5' wide outdoor storage and display area on the east side of the existing facility.

- Temporary structure would be allowed for the months of May and June only.
- Property would be returned to original state after June 30th.
- Variance would not be contrary to public interest.
- Variance does not establish a prohibited use in a Zoning District.

ITEM #5 - con't.

Yeas: 4 – Maxwell, Vleck, Fejes, Gies

Nays: 2 – Hutson, Courtney

MOTION TO GRANT VARIANCE CARRIED

ITEM #6 – VARIANCE REQUESTED. COVENANT BAPTIST CHURCH, 38505 DEQUINDRE, for relief of the 4-6" high masonry wall required adjacent to the north, south and west sides of off-street parking where it is adjacent to residentially zoned land.

Mr. Stimac explained that the petitioner is requesting relief of the 4'-6" high masonry wall required adjacent to the north, south and west sides of off-street parking. This Board on a yearly basis has granted this variance since December 1976 due to the fact that the adjacent land was undeveloped and the petitioner could install landscaping to screen the parking area. New residential subdivisions have now been constructed north and south of the site. This item appeared before this Board at the meeting of January 2000 and was granted a three (3) year renewal. In January 2003, a motion was made by this Board to hold a Public Hearing in order that this relief may be considered for a permanent variance.

William Senich, Pastor of the Church was present and stated that he had nothing to add. Pastor Senich also indicated that he was not aware of any complaints from the neighbors.

The Chairman opened the Public Hearing. No one wished to be heard and the Public Hearing was closed.

There are two (2) written objections on file. There are no written approvals on file.

Motion by Maxwell Supported by Gies

MOVED, to grant Covenant Baptist Church, 38505 Dequindre, relief of the 4'-6" high masonry wall required adjacent to the north, south and west sides of off-street parking where it is adjacent to residentially zoned land.

- Variance is not contrary to public interest.
- Variance will not have an adverse effect to surrounding property.
- Variance applies to this property only.

Yeas: 5 – Maxwell, Courtney, Fejes, Gies, Hutson

Nays: 1 – Vleck

MOTION TO GRANT VARIANCE CARRIED

ITEM #7 – VARIANCE REQUESTED. THE BHARATIYA TEMPLE, 6850 ADAMS, for relief to maintain a berm in lieu of the 4'-6" high masonry screening wall required where off-street parking abuts residential property and relief of the minimum number of trees required along South Boulevard.

The Chairman moved this item to the end of the agenda, **Item #10**, to allow the petitioner the opportunity to be present.

ITEM #8 – VARIANCE REQUESTED. GOOD DEVELOPMENT LLC, 4755 ROCHESTER, for relief to construct an addition to an existing non-conforming industrial building and to have 31,953 square feet of landscaping where 49650 square feet are required.

Mr. Stimac stated that the petitioner is requesting relief to construct an addition to the existing industrial building. The existing building has a side yard setback down to 0 feet on the south side of the building. Section 30.20.09 of the Ordinance requires a minimum side yard setback of 10' in the M-1 (Light Industrial) Zoning District. This building is classified as a legal non-conforming structure. Section 40.50.04 prohibits the expansion of a non-conforming structure.

In addition, Section 39.70.04 of the Troy Zoning Ordinance requires that at least 49,650 square feet of landscaping be provided for a site this size. The site plan submitted indicates that only 31,953 square feet of landscaping will be provided with the proposed addition.

Mr. Hutson asked if the reason the building was non-conforming was because of the 0' side yard setback, and Mr. Stimac stated that it was.

Mr. Maxwell asked if any plans had been submitted for a berm from the petitioner. Mr. Stimac stated that he had not seen any plans indicating what type of plants would be put in this area. Mr. Vleck asked if a site plan would have to be submitted to the Planning Commission for approval if this variance was granted and Mr. Stimac stated that this is correct.

Mr. Courtney asked for clarification on what types of variances are required and Mr. Stimac indicated that one variance is to allow expansion of a non-conforming structure, and the second variance was because the addition would take away some of the existing landscaping resulting in a deficiency of landscape area.

Mr. Neil Silver, Mr. Corey Jacoby and Mr. Jason Anstandig were present representing this item. Mr. Silver indicated that he is the attorney for Versatube and the existing building was built in 1940's and is used as a manufacturing facility. Mr. Silver also indicated that this addition would consist of a two (2) story, approximately 30,000 square foot office building, and would significantly improve the front façade of the existing building. Mr. Silver further stated that the approximate cost of this addition would run between two and one-half million and three million dollars. Mr. Silver also

ITEM #8 - con't.

said that this improvement will allow his client to maintain use of this facility. Mr. Silver said that the physical improvement will not increase the non-conformity of the existing structure, but will be in compliance with the setback requirements. Mr. Silver also said that because the building is at a 0' setback next to the DPW yard, landscaping this area is impossible. Mr. Silver indicated that this plan would provide a maximum buildup along Rochester Road.

Mr. Courtney asked if the landscaping would include a slight berm and Mr. Jacoby stated that they would attempt to put in a berm if the space would allow one. Mr. Silver also said that if that was one of the requirements of the approval of this variance, they would certainly try to do whatever was required.

Mr. Maxwell asked what the primary reason for the expansion was and Mr. Silver stated that the last improvement to this building was done in the 1970's, and they had outgrown the building. Mr. Silver also said that they would like to get the maximum use from this building and felt that this expansion would allow them to do that.

The Chairman opened the Public Hearing. No one wished to be heard and the Public Hearing was closed.

There are no written objections or approvals on file.

Motion by Vleck Supported by Courtney

MOVED, to grant Good Development LLC, 4755 Rochester, relief of the Zoning Ordinance Section 40.50.04 to construct an addition to an existing non-conforming industrial building and relief of Section 39.70.04 to have 31,953 square feet of landscaping where 49,650 square feet of landscaping are required.

- New building addition will conform to all front and side yard setback requirements.
- Addition will provide for 6.43% of landscaping instead of the 10% required.
- Variance is not contrary to public interest.
- Variance will not have an adverse effect to surrounding property.
- Variance will not establish a prohibited use in a Zoning District.

Yeas: 6 – Vleck, Courtney, Fejes, Gies, Hutson, Maxwell

MOTION TO GRANT VARIANCE CARRIED

ITEM #9 – VARIANCE REQUESTED. ST. MARK COPTIC ORTHODOX CHURCH, 3603-3615 LIVERNOIS ROAD, for relief to modify their previously approved site plan to eliminate a berm for the west 210' of the parking lot where the lot is adjacent to residential land.

Mr. Stimac explained that the petitioner is requesting to modify their previously approved site plan. In accordance with action originally taken by the Board of Zoning Appeals in April of 1998, a berm was to be installed between the entire length of the parking lot and residentially zoned property to the south in lieu of a 4'-6" high masonry wall. The revised plan submitted eliminates the berm for the west 210' of the parking lot where the lot is adjacent to residential land that is a city park. The petitioners are asking for approval of this plan modification.

Father Mina Essak, one of the Priests of the Church, was present and stated that they needed this space in order to meet the required number of parking spaces. Father Essak also indicated that they had spoken to the neighbors and that they would only put this parking between the Church and the City Park.

Mr. Stimac also clarified that he had checked with the Assessing Department earlier today and they had indicated that the smaller area adjacent to Huber Park belongs to the Westwood Park Homeowners Association. Mr. Schnell, president of this Association indicated that this park had been donated to the City of Troy.

The Chairman opened the Public Hearing.

Mr. Steven Schnell, president of the Westwood Park Subdivision was present and said that Tadian Development had donated this area of the Park to the City before the Homeowners Association was established. Mr. Schnell also said that discussions had been going on with the Church since 1998, and had believed that the berm would be landscaped in a timely manner, which still has not been accomplished. Mr. Schnell also said that they have written to the Planning Commission and the Zoning Commission expressing concern over the way the construction has been taking place. Mr. Schnell further stated that they have written to the Church stating that if the berm was not landscaped by September 2002, the Association would withdraw their support for the berm and ask to have a masonry wall installed. In November, Mr. Schnell stated that he had received a call from the construction company and they had a meeting with the Church and Mr. Stimac from the Building Department. Mr. Schnell said that the Church had promised to landscape the berm in accordance with the plans, which had been approved by the City. Mr. Schnell also said that the Homeowners Association wants the berm installed the full length of the parking lot. Mr. Schnell further stated that without a berm the property is too isolated and anyone that wishes to go into the woods does so. Mr. Schnell said that they want the berm put in at the maximum height approved by the City, and landscaped as well.

Mr. Salim Momin, 3631 Ruthland, was present and stated that he objects to this variance. Over the last four years, Mr. Momin has been directly affected by the

ITEM #9 - con't.

construction that is ongoing at the Church. Mr. Momin said that in January 2001, the Church needed to add some piping and came across his property, which destroyed his driveway as well as adjacent landscaping. The Church sent him a letter stating that they would fix the damage, however, Mr. Momin had to keep contacting them to get the work done. Mr. Momin said that it took eighteen (18) months for them to complete the repairs. Mr. Momin also said that the original plan called for a berm along the full length of the property and he feels that this is what the Church should put in. Mr. Momin further stated that he would like to see the landscaping added to this berm.

Mr. Dick Minnick, 28 Millstone, was present. Mr. Minnick said that he strongly opposes granting the Church any further relief as they have not been good neighbors and have not followed through on what they said they would do. Mr. Minnick further stated that his property is impacted directly as people who are attending the Church park in front of his home, and then cut across his property to gain access to the Church. Mr. Minnick also said that he has left notes on these cars asking them not to park in front of his home, however, his notes have been ignored. Mr. Minnick further stated that the Church does not shovel any of the snow on the sidewalk along Livernois.

Mr. Abdul Abdul, 172 Millstone Dr., was present. Mr. Abdul said that he objects to this request on both an environmental as well as a social factor. Mr. Abdul stated that he felt that the drainage system was approved on the basis that a berm or masonry wall would be constructed on that property. Mr. Abdul states that in the absence of a berm or masonry wall, the drainage would run south on this property and would contain runoff from the vehicles that are parked here. Mr. Abdul further stated that there are a number of nice trails in the trees as well as some wildlife in the area. Mr. Abdul also said that if parking is allowed in this area debris and litter could result, as well as people who do not belong in this area would then have access to be in the woods.

Mr. Ted Huang, 128 Millstone Dr., was present. Mr. Huang stated that he had tried to be a good neighbor, however, in the last four years he has seen a number of people running through the property, and has seen an increase in litter in the area. Mr. Huang stated that he is opposed to granting this variance request and would like to see a berm the full length of the property.

Father Essak stated that he does not believe that the Church has been a bad neighbor. Father Essak further pointed out that they did not put any part of the berm in the neighbors' property but only used their property. Father Essak also said that they apologized to the neighbor for taking so long to repair his property, and although they realize that their parishioners park in front of other peoples homes, they have asked them not to. Father Essak said that he had seen neighborhood children cut across their property, but has not said anything to them as a gesture of good will. Father Essak said that they have hired a company to shovel the snow and he will speak to them about clearing the sidewalk.

ITEM #9 - con't.

Mr. Yogin Amin, 124 Millstone Dr., stated that he is opposed to this request for a variance. He further stated that he cannot let his daughter play in the yard, due to the fact that members of the Church park their cars so close to his property line.

No one else wished to be heard and the Public Hearing was closed.

Mr. Maxwell asked if this had appeared before this Board at 2001. Mr. Stimac explained that there is a renewable variance for a berm along the entire length of the southern parking lot, as well as a variance for the screen wall along the length of the northern parking lot. Mr. Stimac stated that the petitioner is proposing a modification of the approval granted by this Board in 2001.

Mr. Vleck asked if the existing berm was in compliance. Mr. Stimac stated that Section 39.30 of the Zoning Ordinance states that when a greenbelt screen is required it shall be placed within six months of the issuance of the Certificate of Occupancy. Mr. Stimac said that he understood that the neighbors would like the landscaping done now, however, he cannot require that for six months after the Certificate of Occupancy is issued. Mr. Stimac also said that the Certificate of Occupancy has not been issued at this time, but feels that it could be issued within the next thirty (30) days. Mr. Stimac further stated that the existing berm is not in compliance, specifically as it relates to the western edge of the property.

Mr. Courtney asked if a motion could be made which would grant dropping the western portion of the berm and asking for completion within a certain number of months. Mr. Stimac said that he thought that Phase I of the new building would be ready for occupancy within this month, and plantings would be required by August.

Mr. Vleck asked if they would have to come back to the Board regarding the berm on the south. Mr. Stimac stated that they will have to come before this Board in April 2004 for the berm on the south and the screening wall on the north.

Mr. Maxwell asked for clarification on the requirement for landscaping once the Certificate of Occupancy is issued and Mr. Stimac said that once the Certificate of Occupancy is issued, they will have six (6) months to complete the landscaping requirement. Mr. Maxwell also said that to date, the Church has not complied with the requirements made by the City regarding the berm and would have a difficult time approving any type of request for a variance.

Motion by Maxwell Supported by Gies

ITEM #9 - con't.

MOVED, to deny the request of St. Mark Coptic Orthodox Church, 3603-3615 Livernois Road, for relief to modify their previously approved site plan to eliminate a berm for the west 210' of the parking lot where the lot is adjacent to residential land.

- Variance would cause an adverse effect to surrounding property.
- Variance would be contrary to public interest.

Yeas: 5 – Fejes, Gies, Hutson, Maxwell, Vleck

Nays: 1 – Courtney

MOTION TO DENY VARIANCE MODIFICATION REQUEST PASSED

ITEM #10 (ITEM #7) - VARIANCE REQUESTED. THE BHARATIYA TEMPLE, 6850 ADAMS, for relief to maintain a berm in lieu of the 4'-6" high masonry screening wall required where off-street parking abuts residential property and relief of the minimum number of trees required along South Boulevard.

Motion by Courtney Supported by Vleck

MOVED, to postpone the request of The Bharatiya Temple, 6850 Adams, for relief to maintain a berm in lieu of the 4'-6" high masonry screening wall required where off-street parking abuts residential property and relief of the minimum number of trees required along South Boulevard until the next meeting of March 18, 2003.

 To allow the Building Department to contact the petitioner to appear before the Board.

Yeas: 6 – Courtney, Fejes, Gies, Hutson, Maxwell, Vleck

MOTION TO POSTPONE REQUEST UNTIL THE MEETING OF MARCH 18, 2003 CARRIED

Mr. Stimac reminded the members to respond to the invitation for the appreciation banquet by February 21, 2003.

Mr. Stimac informed the Board Members that the City is considering issuing identification badges for all members.

The Board of Zoning Appeals meeting adjourned at 9:06 P.M.

MS/pp